

ASSEMBLY BILL

No. 655

Introduced by Assembly Member Emmerson

February 25, 2009

An act to amend Sections 21702.5, 21705, 21707, 21708, 21709, and 21713.5 of, and to repeal Sections 21706 and 21710 of, the Business and Professions Code, relating to self-service storage facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 655, as introduced, Emmerson. Self-service storage facilities.

Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if an owner sends an occupant a preliminary lien notice by certified mail, the owner may, upon the effective date of the lien, deny the occupant access to the space, enter the space, and remove property to safe keeping. However, if the owner sends the preliminary lien notice by first-class mail with certificate of mailing, the owner may not remove the property for at least 14 days following the effective date of the lien. Existing law requires owners to send occupants a notice of lien sale stating that the property will be sold to satisfy the lien after a date not less than 14 days following the date of mailing unless the amount of the lien is paid or the occupant returns a declaration in opposition to lien sale in a specified form. Existing law specifies procedures for an owner to enforce the lien following receipt of a declaration in opposition to lien sale. Existing law requires that a lien sale be advertised in a newspaper of general circulation in the judicial district where the sale is to be held, or posted in conspicuous places in the neighborhood of the proposed sale, as specified, and provides that

prior to a lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and reasonable expenses incurred for particular actions taken. Existing law provides that an owner may assess a reasonable late payment fee if an occupant does not pay the entire amount of the rental fee, as specified based upon the amount of the rent.

This bill would provide that, if the occupant has not paid the full amount specified by the date in the preliminary lien notice, the lien will attach as of that date and the owner may deny the occupant access to the space, enter the space, and remove any property to safe keeping. The bill would require the owner to send the occupant a notice of lien sale stating that: the property will be sold to satisfy the lien after a specified date that is not less than 21 days from the date of mailing; the occupant may regain full use of the space by paying the full lien amount prior to the specified date; the occupant may challenge the lien sale by filing an action in a court having jurisdiction as specified; and other information, as specified. The bill would eliminate the occupant's right to return a declaration in opposition to lien sale. The bill would provide that the lien sale be advertised in a commercially reasonable manner of public notice, as specified. The bill would provide that prior to any lien sale, any person claiming a right to the goods may pay the amount necessary to satisfy the lien together with one month's rent in advance, in which case the owner would retain the property pending a court order directing the disposition of the property. The bill would also prescribe procedures to be followed if a court order is not obtained. The bill would provide that an owner may assess a late fee equal to the greater of \$20 or 20% of the monthly rent, and may recover reasonable expenses incurred in collecting rent and enforcing a lien.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21702.5 of the Business and Professions
- 2 Code is amended to read:
- 3 21702.5. (a) Any lien on a vehicle or vessel subject to
- 4 registration or identification under the Vehicle Code which has
- 5 attached and is set forth in the documents of title to the vehicle or
- 6 vessel shall have priority over any lien created pursuant to this
- 7 chapter.

(b) Any lien created pursuant to this chapter on a vehicle or vessel subject to registration or identification under the Vehicle Code shall be enforced in accordance with the provisions of Section 3071 of the Civil Code, in the case of a vehicle, or Section 503 of the Harbors and Navigation Code, in the case of a vessel, and not as prescribed in Sections 21705 to 21711, inclusive, ~~except that actions may be conducted as provided in Section 21710.~~

(c) Any lien created pursuant to this chapter on a vehicle or vessel subject to registration or identification under the Vehicle Code shall not include any charges for rent, labor, or other services incurred pursuant to the rental agreement, accruing more than 60 days after the date the lien imposed pursuant to this chapter attaches, as set forth in Section 21705, and before application is made for authorization to conduct the lien sale pursuant to the requirements of Section 3071 of the Civil Code or Section 503 of the Harbors and Navigation Code.

(d) Any proceeds from a lien sale shall be disposed of pursuant to Section 3073 of the Civil Code, in the case of a vehicle, or Section 507.5 of the Harbors and Navigation Code, in the case of a vessel.

SEC. 2. Section 21705 of the Business and Professions Code is amended to read:

21705. (a) If the notice *has been sent as* required by Section 21703 ~~is sent by certified mail~~ and the total sum due has not been paid ~~as within 14 days of the termination date specified in the preliminary lien notice as the termination date,~~ the lien imposed by this chapter attaches as of that date and the owner may do all of the following:

- (1) Deny an occupant access to the space.
- (2) Enter the space.
- (3) Remove any property found therein to a place of safe keeping.

~~(b) If the notice required by Section 21703 is sent by regular first-class mail with a certificate of mailing and the total sum due has not been paid as of the termination date, the lien imposed by this chapter attaches as of that date and the owner may deny an occupant access to the space and enter the space. The owner may not remove the occupant's property until not less than 14 days after the termination date, during which time the occupant may regain full use of the space by paying the full lien amount.~~

~~(e) Under either subdivision (a) or~~

~~(b) Upon taking the actions described in subdivision (b) (a),~~
the owner shall send to the occupant *a notice of lien sale*, addressed
to the occupant's last known address, and to the alternative address
specified in subdivision (b) of Section 21712, by certified mail *or*
by first-class mail, if the owner obtains a certificate of mailing,
postage prepaid, ~~all of the following:~~

~~(1) A notice of lien sale that states all of the following:~~

~~(A)~~

(1) That the occupant's right to use the storage space has
terminated and that the occupant no longer has access to the stored
property.

~~(B)~~

(2) That the stored property is subject to a lien, ~~and the current~~
amount of the lien, ~~and that the lien will continue to increase if~~
rent is not paid.

~~(C)~~

(3) That the property will be sold to satisfy the lien after a
specified date that is not less than ~~14~~ 21 days from the date of
mailing the notice ~~unless the amount of the lien is paid or the~~
~~occupant executes and returns by certified mail a declaration under~~
~~penalty of perjury in opposition to the lien sale in the form set forth~~
~~in paragraph (2). If the notice required by Section 21703 was sent~~
~~by regular mail with a certificate of mailing, the notice of lien sale~~
~~shall include a.~~

(4) A statement that the occupant may regain full use of the
space by paying the full lien amount prior to the date specified in
this paragraph (3).

(5) *A conspicuous statement that the occupant may challenge*
the sale by filing an action in any court having jurisdiction to
render a judgment in the amount of the lien.

~~(D)~~

(6) That any excess proceeds of the sale over the lien amount
and costs of sale will be retained by the owner and may be
reclaimed by the occupant or claimed by another person at any
time for a period of one year from the sale and that thereafter the
proceeds will escheat to the county *in which the sale is to take*
place.

~~(2) A blank declaration in opposition to the lien sale that shall~~
~~be in substantially the following form:~~

DECLARATION IN OPPOSITION TO LIEN SALE

I, _____,

(occupant's name)

have received the notice of lien sale of the property stored at

_____.

(location and space #)

I oppose the lien sale of the property. My address is:

(address)

(city)

(state)

(ZIP Code)

I understand that the lienholder may file an action in court against me, and if a judgment is given in his or her favor, I may be liable for the court costs. I declare under penalty of perjury that the foregoing is true and correct, and

that this declaration was signed by me on

_____ at _____.

(date)

(place)

(signature of occupant)

SEC. 3. Section 21706 of the Business and Professions Code is repealed.

21706. If a declaration in opposition to the lien sale, executed under penalty of perjury, is not received prior to the date of sale set forth in the notice of lien sale, the owner may subject to the provisions of Sections 21708 and 21709 sell the property upon complying with the requirements set forth in Section 21707.

SEC. 4. Section 21707 of the Business and Professions Code is amended to read:

21707. (a) After the expiration of the time given in the notice of lien sale, pursuant to subdivision (a) (b) of Section 21705, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, the

1 ~~space number of the occupant, and the name and location of the~~
2 ~~storage facility. If there is no newspaper of general circulation~~
3 ~~published in the judicial district where the sale is to be held, the~~
4 ~~advertisement shall be posted at least 10 days before the sale in~~
5 ~~not less than six conspicuous places in the neighborhood of the~~
6 ~~proposed sale.~~

7 ~~(b) The or following the failure of a claimant to pay rent or~~
8 ~~obtain a court order pursuant to Section 21709, the sale shall be~~
9 ~~conducted advertised and the personal property shall be sold in a~~
10 ~~commercially reasonable manner; and, after. After deducting the~~
11 ~~amount of the lien and costs of sale, the owner shall retain any~~
12 ~~excess proceeds of the sale on the occupant's behalf. The occupant,~~
13 ~~or any other person having a court order or other judicial process~~
14 ~~against the property, may claim the excess proceeds, or a portion~~
15 ~~thereof sufficient to satisfy the particular claim, at any time within~~
16 ~~one year of the date of sale. Thereafter, the owner shall pay any~~
17 ~~remaining excess proceeds to the treasury of the county in which~~
18 ~~the sale was held.~~

19 ~~(b) Advertising of a lien sale shall be deemed to be in a~~
20 ~~commercially reasonable manner if it is by any method of public~~
21 ~~notice reasonably calculated to inform potential buyers and other~~
22 ~~interested parties that the property will be sold on a specified date,~~
23 ~~including, but not limited to, posting notice of sale at the facility~~
24 ~~or on the owner's self-service storage facility Internet Web site~~
25 ~~not less than 10 days before the sale, advertising in a local~~
26 ~~publication in which sales of used personal property are advertised,~~
27 ~~or direct communications with potential buyers of used personal~~
28 ~~property by mail, delivery service, or electronic means.~~

29 SEC. 5. Section 21708 of the Business and Professions Code
30 is amended to read:

31 21708. Any person who has a perfected security interest under
32 Division 9 (commencing with Section 9101) of the Commercial
33 Code may claim any personal property subject to the security
34 interest and subject to a lien pursuant to this chapter by paying the
35 total amount due, as specified in the preliminary lien notice, for
36 the storage of the property, ~~if no declaration of opposition to the~~
37 ~~lien sale is executed and returned by the occupant.~~ Upon payment
38 of the total amount due, the owner shall deliver possession of the
39 particular property subject to the security interest to the person
40 who paid the total amount due. The owner shall not be liable to

1 any person for any action taken pursuant to this section if the owner
2 has fully complied with the requirements of Sections 21704 and
3 21705.

4 SEC. 6. Section 21709 of the Business and Professions Code
5 is amended to read:

6 21709. Prior to any sale pursuant to Section ~~21706~~ 21707, any
7 person claiming a right to the goods may pay the amount necessary
8 to satisfy the lien ~~and the reasonable expenses incurred for~~
9 ~~particular actions taken pursuant to this chapter together with one~~
10 ~~month's rent in advance.~~ In that event, the goods shall not be sold,
11 but shall be retained by the owner ~~subject to the terms of this~~
12 ~~chapter~~ pending a court order directing ~~a particular~~ the disposition
13 of the property. *If a court order is not obtained within 30 days*
14 *following the date of the payment pursuant to this section, the*
15 *claimant shall pay the owner the monthly rental charge for the*
16 *space where the property is stored pursuant to the terms of the*
17 *rental agreement. If the claimant does not pay this rent, the owner*
18 *may sell or dispose of the personal property in accordance with*
19 *Section 21707. The owner shall have no liability for the sale or*
20 *other disposition of the personal property to any claimant who*
21 *fails to secure a court order or pay the required rental charge as*
22 *provided in this section.*

23 SEC. 7. Section 21710 of the Business and Professions Code
24 is repealed.

25 ~~21710. If a declaration in opposition to the lien sale is received~~
26 ~~prior to the date set forth in the notice of lien sale, the owner may~~
27 ~~enforce the lien as follows:~~

28 ~~(a) An action to enforce the owner's lien shall be commenced~~
29 ~~by the filing of a verified complaint setting forth the facts upon~~
30 ~~which the claim of lien is based. The summons and complaint may~~
31 ~~be served by certified mail, postage prepaid, addressed to the~~
32 ~~occupant at the occupant's last known address, in which case~~
33 ~~service shall be deemed completed on the fifth day after the~~
34 ~~mailing, or in any other manner authorized by Chapter 4~~
35 ~~(commencing with Section 413.10) of Title 2 of Part 2 of the Code~~
36 ~~of Civil Procedure.~~

37 ~~(b) The occupant shall have 10 days in which to respond to the~~
38 ~~complaint after service of the summons is completed, which time~~
39 ~~may be extended for good cause shown.~~

1 ~~(e) If the occupant has not responded to the complaint by answer~~
2 ~~or demurrer within the time allowed after service is completed,~~
3 ~~the clerk, upon application of the owner, shall enter the default of~~
4 ~~the occupant, and thereafter, the owner may apply to the court for~~
5 ~~judgment in the amount of the lien, including costs.~~

6 ~~(d) Any judgment entered on the action on the lien in favor of~~
7 ~~the owner may be enforced by sale of the property by the owner.~~
8 ~~The sale shall be conducted in a commercially reasonable manner,~~
9 ~~and shall take place 10 days or more from the entry of judgment,~~
10 ~~unless within that time period, or at any time prior to the sale, the~~
11 ~~occupant pays to the owner the full amount of the judgment.~~

12 ~~(e) Enforcement of the judgment may be stayed, pending appeal,~~
13 ~~by the posting of a bond by the occupant in an amount one and~~
14 ~~one-half times the amount of the judgment, in which case the~~
15 ~~property may be released to the occupant.~~

16 SEC. 8. Section 21713.5 of the Business and Professions Code
17 is amended to read:

18 21713.5. (a) The owner of a self-service storage facility may
19 assess a ~~reasonable~~ late payment fee if an occupant does not pay
20 the entire amount of the rental fee specified in the rental agreement,
21 subject to the following requirements:

22 (1) No late payment fee shall be assessed unless the rental fee
23 remains unpaid for at least 10 days after the date specified in the
24 rental agreement for payment of the rental fee.

25 (2) The amount of the late payment fee shall be specified in the
26 occupant's rental agreement.

27 (3) Only one late payment fee shall be assessed for each rental
28 fee payment that is not paid on the date specified in the rental
29 agreement.

30 ~~(b) For purposes of this section, a "reasonable late payment fee"~~
31 ~~is one that does not exceed the following:~~

32 ~~(1) Ten dollars (\$10), if the rental agreement provides for~~
33 ~~monthly rent of sixty dollars (\$60) or less.~~

34 ~~(2) Fifteen dollars (\$15), if the rental agreement provides for~~
35 ~~monthly rent greater than sixty dollars (\$60), but less than one~~
36 ~~hundred dollars (\$100).~~

37 ~~(3) Twenty dollars (\$20) or 15 percent of the monthly rental~~
38 ~~fee, whichever is greater, if the rental agreement provides for~~
39 ~~monthly rent of one hundred dollars (\$100) or more.~~

- 1 *(4) The late payment shall not exceed the greater of twenty*
- 2 *dollars (\$20) or 20 percent of the monthly rent.*
- 3 *(b) An owner may recover from the occupant any reasonable*
- 4 *expenses incurred in collecting rent and enforcing a lien created*
- 5 *pursuant to this chapter.*

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